

CLAUSE I-113 – RIGHTS IN DATA - FACILITIES (August 2002)

(a) Definitions.

- (1) “Computer data bases” as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) “Computer software”, as used in this clause means –
 - (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
 - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.
- (3) “Data”, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of the subcontract, such as financial, administrative, cost and pricing, or management information.
- (4) “Limited rights data”, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. SURA or the Government’s rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (e) of this clause.
- (5) “Restricted computer software”, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications or any such computer software. SURA or the Government’s right to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (f) of this clause.
- (6) “Technical Data”, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.
- (7) “Unlimited rights”, as used in this clause, means the rights of SURA or the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) SURA or the Government shall have:
 - (i) Ownership of all technical data and computer software first produced in the performance of this subcontract.
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this subcontract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
 - (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this subcontract at all reasonable times. The Subcontractor shall make available all necessary facilities to allow SURA personnel to perform such inspection.
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Subcontract delivered to SURA or the Government or otherwise disposed of by the Subcontractor, either as the Subcontracting Officer may from time to time direct during the progress of the work or in any event as the Subcontracting Officer shall direct upon completion or termination of this Subcontract. The Subcontractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to SURA such data upon request by the Subcontracting Officer. If such data are limited rights data or restricted computer software, the rights of SURA in such data shall be governed solely by the provisions of paragraph (e) of this clause (“Rights in Limited Rights Data”) or paragraph (f) of this clause (“Rights in Restricted Computer Software”); and
 - (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this subcontract on any data furnished hereunder if, in response to a written inquiry by SURA or the Government concerning

the propriety of the markings, the Subcontractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case SURA or the Government will notify the Subcontractor of the action taken.

(2) The Subcontractor shall have –

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;
 - (ii) The right to use for its private purposes, subject to patent, security, or other provisions of this Subcontract, data it first produces in the performance of this Subcontract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Subcontract have been met as of the date of the private use of such data; and
- (3) The Subcontractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information that it receives from, or is given access to by SURA or the Government or a third party, including a SURA subcontractor, and for technical data or computer software it first produces under this subcontract which is authorized to be marked by SURA or the Government, the subcontractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

- (1) The Subcontractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this subcontract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable, world-wide license for SURA or Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Subcontractor.
- (2) The Subcontractor agrees not to include in the technical data or computer software delivered under the subcontract any material copyrighted by the subcontractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of SURA or the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Subcontractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Subcontractor shall obtain the written authorization of the Subcontracting Officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

- (1) Unless otherwise directed by the Subcontracting Officer, the Subcontractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Subcontractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at FAR 52.227-16, Additional Data Requirements shall be included in subcontracts in accordance with DEAR 927.409(h). The Subcontractor shall use instead the Rights in Data—Facilities clause at DEAR 970.5204-82 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
- (2) It is the responsibility of the Subcontractor to obtain from its subcontractors' technical data and computer software and rights therein, on behalf of SURA or the Government, necessary to fulfill the Subcontractor's obligations to SURA or the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording SURA or the Government such rights, the Subcontractor shall –
 - (i) Promptly submit written notice to the Subcontracting Officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without written authorization of the Subcontracting Officer.
- (3) Neither the Subcontractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

- (e) Rights in Limited Rights Data. Except as may be otherwise specified in this subcontract as data which are not subject to this paragraph, the Subcontractor agrees to and does hereby grant to SURA or the Government an irrevocable nonexclusive, paid-up license by or for SURA or the Government, in any limited rights data of the Subcontractor specifically used in the performance of this Subcontract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Subcontractor at the time of initial delivery to SURA or the Government or a representative of SURA or the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice":

These data contain "limited rights data," furnished under Subcontract _____ with the Southeastern Universities Research Association, Inc. under Contract No. DE-AC05-84ER-40150 with the United States Department of Energy which may be duplicated and used by SURA or the Government with the express limitations that the "limited rights data" may not be disclosed outside SURA or the Government or be used for purposes of manufacture without prior permission of the Subcontractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services subcontractors within the scope of their subcontracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other subcontractors participating in the Government's program of which this Subcontract is a part for information or use (except for manufacture) in connection with the work performed under their subcontracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by SURA or the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

- (f) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Subcontract as data which are not subject to this paragraph, the Subcontractor agrees to and does not hereby grant to SURA or the Government an irrevocable, nonexclusive, paid-up license by or for SURA or the Government in any restricted computer software of the Subcontractor specifically used in the performance of this Subcontract; provided, however that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Subcontractor at the time of initial delivery to SURA or the Government or a representative of SURA or the Government, such data shall not be used within or outside SURA or the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice."

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Subcontract No. _____ issued by the Southeastern Universities Research Association, Inc. under Department of Energy Contract No. DE-AC05-84ER-40150. It may not be used, reproduced, or disclosed by SURA or the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be –
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any SURA or Government facility/installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by subcontractors under a service subcontract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided SURA or the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to SURA or the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Subcontract No. _____ issued by the Southeastern Universities Research Association, Inc. under Department of Energy Contract No. DE-AC05-8434-40150.

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a (R-mo/yr), may be used. This will be read to mean restricted computer software, subject to the rights of SURA or the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this subcontract contains any variation to the rights in the Long Form Notice, then the subcontract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to SURA or the Government without disclosure prohibitions and with unlimited rights, unless the Subcontractor includes the following statement with such copyright notice, "Unpublished-rights reserved under the Copyright Laws of the United States."
- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to SURA or the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to SURA or the Government under any patent.